

F & F MINING CO., INC.

IBLA 80-249

Decided November 25, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims N MC 10464 through N MC 10484 abandoned and void.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

APPEARANCES: Frank H. Forvilly and Michael E. Francoeur, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

F & F Mining Company, Inc., has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated December 4, 1979, declaring its mining claims, N MC 10464 through N MC 10484, abandoned and void for failure to file evidence of assessment work or notices of intention to hold the claims prior to December 31, 1978, as required by 43 CFR 3833.2.

The claims in issue were recorded with BLM on November 16, 1977. In its statement of reasons, appellant alleges that evidence of assessment work together with a transmittal letter, dated December 17, 1978, were timely submitted to BLM and attaches copies of these documents for

the Board's review. Appellant indicates that it did not learn that BLM had not received the 1978 filing until its representatives appeared at the BLM office in November 1979 to file its 1979 evidence of assessment work and reports that BLM employees said that they were "way behind" in filing 1978 evidence of assessment affidavits and that "because of being understaffed with a great amount of paperwork for new claims, that our 1978 assessment affidavit could have even been lost." Appellant notes that the claims were located between 1966 and 1974 and have been actively worked since location. Furthermore, appellant contends that if it had been notified of its deficiency prior to October 22, 1979, it could have refiled before that cutoff date.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. While the decision of the State Office held that the mining claim was deemed abandoned and void for failure to file proof of assessment work on or before December 30, 1978, this Board has recently reexamined the relevant regulation, 43 CFR 3833.2-1(a), in light of the controlling statute, 43 U.S.C. § 1744(a) (1976). In Harvey A. Clifton, 60 IBLA 29 (1981), we held that the statutory requirement for annual filings of either evidence of assessment work or notice of intention to hold was triggered by the initial filing of such documents and not by the mere recordation of the claims. Thus, where, as here, a pre-FLPMA claim was recorded in 1977 but was not accompanied by either evidence of assessment work or notice of intention to hold, failure to file such proofs in calendar year 1978 does not give rise to a conclusive presumption unless notice of the deficiency is accorded a claimant, the claimant is given an opportunity to cure the defect, and the claimant fails to do so. Thus, to the extent that the State Office decision held that the claim was conclusively presumed to be abandoned and void for failure to file assessment proofs on or before December 30, 1978, the decision is in error.

In this case, however, there is no record of any filing of assessment work until December 27, 1979. The statute clearly required the initial filing for pre-FLPMA claims on or before October 22, 1979, failing which the claim must be deemed abandoned and void. The December 27, 1979, filing would thus be untimely. The Board has no authority to waive or excuse a late filing under this statutory provision. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Although appellant alleges that the 1978 evidence of assessment work was timely submitted, it has presented no evidence to us indicating that BLM received the document. 1/ The Nevada State Office

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1/ Under Harvey A. Clifton, supra, had BLM received evidence of assessment work in calendar year 1978, claimant would have had until Dec. 30, 1979, to file his next annual assessment work.

admits that there was a backlog in early 1979 causing delay in the preparation and mailing of acknowledgement cards and decisions but insists that they carefully controlled all documents submitted by locators and that all personnel guarded against the loss of documents. We have often held that the burden of insuring that BLM receives a filing is on the person filing, and that person must bear the consequences of nonreceipt. Bernard S. Storper, 60 IBLA 67 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). Accordingly, BLM properly declared appellant's claims abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

